IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7027 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD ST.XAVIERS' COLLEGE SOCIETY

Versus

COMMISSIONER OF HIGHER EDUCATION

Appearance:

1. Special Civil Application No. 7027 of 2001

NANAVATI & NANAVATI for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1

MR MITUL K SHELAT for Respondent No. 2

MS NIRALI B MUNSHI for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/09/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. Draft amendment is allowed. The amendment shall be carried out within one week from today.

#. Feeling aggrieved by the interim order dated 3rd August, 2001, the petitioner has preferred the present petition.

#. It appears that the respondent no.3 herein has been appointed by the petitioner as a Lecturer with effect from 1st December, 1997. However, salaries of the said respondent has not been paid as yet. Feeling aggrieved the said respondent filed Application No.47/2000 before the Gujarat Affiliated Colleges Services Tribunal. On 19th December, 2000, the learned Tribunal issued direction to the respondent no.1, the present petitioner, to prepare the salary bill in respect of the respondent no.3 with effect from 1st December, 1997 and to forward the same to the Commissioner of Higher Education within two weeks from the date of receipt of the order. It further appears that the said order was duly served upon the petitioner, and in compliance thereof, the petitioner did prepare the salary bill of the respondent no.3 and sent it to the Commissioner of Higher Education under the cover of its letter dated 21st December, 2000. However, the Commissioner of Higher Education did not accept the said bill, nor did he process the same. The petitioner, also, thereafter neglected to appear before the learned Tribunal. After several adjournments and after receiving written statement of the Commissioner of Higher Education, the learned Tribunal has made the impugned order on 3rd August, 2001. Feeling aggrieved, the petitioner has preferred the present petition.

#. Mr.Nanavati has submitted that the impugned order has been made ex parte (i.e. in absence of the petitioner herein) and at the suggestion made on behalf of the Commissioner of Higher Education. He has submitted that it is the primary liability of the State Government to pay the salaries to the respondent no.3 and no order could have been issued against the petitioner to pay the salaries to the respondent no.3. He has further submitted that the petitioner has several defences, however, the petitioner was not given an opportunity and therefore the petitioner could not defend the application made by the respondent no.3.

#. I see no substance in the contention raised by Mr.Nanavati. The 'Rojkam' has been produced on the records of this matter. It is more than evident that the petitioner was given an adequate notice of the above

referred Application No.47/2000 and also the order made thereon. Even, thereafter, several adjournments were granted but at no occasion the petitioner had appeared before the learned Tribunal. I am, therefore, of the view that the impugned order can not be said to have been made ex parte.

#. However, the ends of the justice shall be met if the petitioner approaches the learned Tribunal for recalling the impugned order and for giving the petitioner an opportunity of filing its written statement, as well as, of hearing before making any interim order on the Application No.47/2000. It is, therefore, directed that the petitioner shall approach the learned Tribunal and shall make an application for recalling the impugned order dated 3rd August, 2001 within one week from today. If, such an application is made, the same shall be considered and decided on merits.

#. Subject to the above directions, the petition is dismissed. Rule is discharged with costs.

(Ms. R.M. Doshit, J.)

/sakkaf